

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEMARION TRAMMEL,

Plaintiff,

v.

A. RAMOS, et al.,

Defendants.

No. 2:23-cv-1111 KJM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se. Findings and Recommendations regarding defendant's motion for a stay have been submitted to the district judge (ECF No. 51), and defendants have filed objections (ECF No. 52). In light of those objections, for the reasons explained below, the Findings and Recommendations will be vacated and supplemental briefing ordered. The court also addresses plaintiff's motion for appointment of counsel (ECF No. 53).

I. Objections to Findings and Recommendations

On May 13, 2025, the undersigned recommended the denial of defendants' motion for a stay pursuant to Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941). ECF No. 51. In so recommending, the undersigned also *sua sponte* considered whether abstention was appropriate under Younger v. Harris, 401 U.S. 37 (1971), and found that it was not. Id. at 4-6. It was further noted that, for the same reasons Younger abstention was not appropriate, defendants' cursory argument that plaintiff's claims would be barred by Heck v. Humphrey, 512 U.S. 477

1 (1994), was also unconvincing. Id. at 5 n.3.

2 Defendants have now filed objections to the findings and recommendations in which they
3 argue for the first time that Younger abstention is appropriate, and—unlike in their moving
4 papers—fully articulate their argument that plaintiff’s claims will be barred by Heck. ECF No.
5 52. They also request that the court take judicial notice of the transcript of plaintiff’s preliminary
6 hearing in his state criminal case. ECF No. 52-1.

7 Although defendants should have fully briefed their Heck bar theory in their moving
8 papers rather than in their objections, in the interests of judicial economy the May 13, 2025
9 findings and recommendations will be vacated and defendants will be given an opportunity to
10 provide supplemental briefing on whether Younger abstention is appropriate in this case,
11 including any arguments as to why this case would be Heck barred if plaintiff is convicted in the
12 state court. Defendants should present all arguments for why a stay is appropriate that they may
13 wish to make. Plaintiff will then be given an opportunity to respond, at which point the matter
14 will be submitted for decision.

15 II. Motion for Counsel

16 Plaintiff has moved for appointment of counsel. ECF No. 53. District courts lack
17 authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v.
18 United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may
19 request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell
20 v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
21 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must
22 consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to
23 articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.
24 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to
25 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.
26 Circumstances common to most prisoners, such as lack of legal education and limited law library
27 access, do not establish exceptional circumstances that warrant a request for voluntary assistance
28 of counsel.

1 Plaintiff seeks appointment of counsel on the ground that he requires assistance going into
2 trial because of his mental and physical capabilities. ECF No. 53. However, it has not yet been
3 determined whether this case will proceed to trial, and plaintiff has not provided any explanation
4 or evidence demonstrating that his mental and physical capabilities render him unable to represent
5 himself. Plaintiff has therefore failed to meet his burden of demonstrating exceptional
6 circumstances warranting the appointment of counsel at this time.

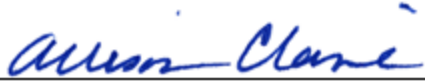
7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The Findings and Recommendations issued on May 13, 2025 (ECF No. 51) are
9 VACATED.

10 2. Within twenty-one days of the service of this order, defendants may file a
11 supplemental brief in support of their motion to stay, as set forth above. Plaintiff may file a
12 response within twenty-one days of service of the supplemental brief.

13 3. Plaintiff's motion for the appointment of counsel (ECF No. 53) is DENIED without
14 prejudice.

15 DATED: June 12, 2025

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17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
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